

Article 2: Administrative Code

**Division 30: Contract Definitions, Competitive Bidding Procedures,
and Contract Alterations**

*(“ Contract Definitions, Competitive Bidding Procedures,
and Contract Alterations ”
added 6–29–1998 by O–18532 N.S.)*

§22.3001 Purpose and Scope of Division

The purpose of this Division is to provide uniform definitions for Divisions 30, 31, 32, 33, 34, 35, and 36 of Article 2, Chapter 2 of the Municipal Code; to provide a comprehensive, clear procedure for competitively bidding *contracts* and *public works contracts*; and, to provide clarity and consistency in the City’s alteration of contracts. *(Retitled from “Purpose and Intent; Scope of Division” and amended 9-3-2002 by O–19095 N.S.)*

§22.3002 Relationship to State Law

- (a) Pursuant to Section 1100.7 of California’s Public Contract Code, the City Council declares that the City’s Public Contracts Code, or any portion thereof, is expressly exempt from the California Public Contracts Code.
- (b) In the interest of ensuring an expeditious and fair procedure for administering the award of its public contracts, the City in its discretion may follow portions of the California Public Contract Code, but absent a judicial finding that a particular aspect of local public contracting is a matter of statewide concern, the City is not required to do so.

(Amended 9-3-2002 by O-19095 N.S.)

§22.3003 Definitions

Terms defined in Chapter 2, Article 2, Divisions 30, 31, 32, 33, 34, 35, and 36 are indicated by italics. For purposes of Chapter 2, Article 2, Divisions 30, 31, 32, 33, 34, 35, and 36:

Agency includes the State of California, counties, districts, public authorities, joint power agencies, public non-profit corporations, and any other public or quasi-public entity that the Council may designate by resolution.

Announcement means the declaration of the intent to *award a contract* or a *public works contract*, by any means of transmission; including U.S. mailing, automated phone message or Internet posting. The effective date of an *announcement* by mail is the date that the *announcement* is deposited in the U.S. mail.

Award means the acceptance of a bid or proposal by the City's authorized representative.

Award date or *date of award* means the date that the City Manager or his designee signs the documents constituting a *public works contract*, *contract*, or *consultant agreement*, and all conditions precedent to *award* have been satisfied.

Bidder means a *person* who submitted a bid, proposal or other document seeking *award* of a *contract*, *public works contract* or *consultant agreement*.

Brand Name refers to a specific product in specifications for *goods*, *services*, or *public works*.

City's Public Contracts Code includes the City's Charter, Municipal Code, Council policies, administrative regulations, past practices, current practices, or any portion of those laws, policies, regulations, or practices, pertaining to *contracts* or agreements between the City and other party.

Consultant includes providers of expert or professional *services* and excludes providers of *services*.

Contract includes a *contract for goods*, a *contract for services*, or a *cooperative procurement contract* unless otherwise stated.

Contract for Goods means an agreement between the City and another party in which the City is the purchaser of articles, commodities, materials, supplies, equipment, or insurance.

Contract for Inmate Services means an agreement between the City and an *Agency* for the use of inmates confined in state prisons, or probationers, or parolees to perform *services*.

Contract for Services means an agreement between the City and another party in which the City is the purchaser of *services*, excluding *consultant services*. It includes *maintenance contracts*.

Cooperative Procurement Contract means a *contract* entered into by the Purchasing Agent and another *agency* to obtain *goods* or *services* or an *agency contract* utilizing a bidding process that complies with City requirements.

Emergency means an event of great public calamity, such as extraordinary fire, flood, storm, epidemic or other disaster.

Evaluation Team means the City team (consisting of one or more members) assembled to review and evaluate bids and proposals.

General Requirements Contract means a *public works contract* which contains a unit price book of detailed specifications and unit prices for typical tasks. Specific construction projects are not contemplated or authorized at the time of *award*. Work is authorized as required by a separate *task order*.

Goods means any articles, commodities, materials, supplies, equipment, or insurance.

Maintenance Contracts has the meaning contained in section 65.0201 of this Code.

Major public works contract means a *public works contract* valued at more than \$250,000.

Minor public works contract means a *public works contract* valued at \$250,000 or less.

Person has the same meaning as that in San Diego Municipal Code section 11.0210.

Protest Body means a panel appointed by the City Manager as needed to review evidence presented by all interested parties to determine whether the *evaluation team's* contract selection is in accordance with all applicable laws and guidelines.

Public Meeting means an assemblage of interested persons gathered in response to a notice specifying the time and place where bids will be opened.

Public Works means the construction, reconstruction, or repair of public buildings, streets, utilities and other public works.

Public Works Contract means a *contract* for the construction, reconstruction or repair of public buildings, streets, utilities and other public works.

Responsible means a *bidder's* quality, fitness, and capacity to perform the particular requirements of the proposed work.

Responsiveness means a *bidder's* compliance with the bidding instructions.

Services means all work provided by *persons* other than *consultants*. It includes *maintenance contracts*. It excludes *public works and goods*.

Sole Source means the recipient of the *award* of a *public works contract*, *consultant agreement*, or *contract* without competitive selection or bidding.

Sole Source Contract means a *public works contract*, *consultant agreement*, or *contract* awarded without competitive selection or bidding.

Task Order means an authorization for construction, reconstruction, repair and maintenance work under a *general requirements contract*.

Valued at means the amount authorized to be expended for performance of a *public works contract* at the same time of bid opening.

(Amended 9-3-2002 by O-19094 N.S. and O-19095 N.S.)
Amended 1-24-2005 by O-19353 N.S.)

§22.3006 Bid Initiation; When Advertising in Official Newspaper Required for Public Works Contract

- (a) *Major public works contracts* that provide for an expenditure of more than \$250,000 shall be advertised for a minimum of one day in the City Official Newspaper; provided, however, that no advertising shall be required for a *sole source contract* certified by the City Manager in accordance with section 22. 3037.
- (b) The City Manager may *award minor public works contracts* without advertising. In lieu of advertising, the City Manager shall follow procedures set forth in Municipal Code Chapter 2, Article 2, Division 36, and in regulations adopted by the City Manager consistent with this Section and Division 36. The Manager's regulations shall ensure that the City seeks competitive prices either orally or in writing and shall ensure that the City Manager has taken those prices under consideration before a *minor public works contract* is awarded.

(Retitled from "*Bid Initiation; Advertising in Official Newspaper*" and amended 9-3-2002 by O-19095 N.S.)
(Amended 1-24-2005 by O-19353 N.S.)

§22.3007 Insurance and Bonds May Be Required

The City is authorized to require vendors and contractors to provide insurance and surety bonds for *contracts* and *public works contracts*. Where required, the bidder shall submit insurance or surety bonds, or both, acceptable to the City prior to award.
(Retitled from "*Insurance and Bonds May be Required*" and amended 9-3-2002 by O-19095 N.S.)

§22.3008 Issuance of Specifications for Contracts Requiring Bidding

For *contracts* requiring bidding under divisions 30 through 36 of Chapter 2, Article 2 of this Municipal Code:

- (a) When making a procurement, the City will issue a description (“specifications”) for the Goods, Services, Public Works, or Cooperative Procurement Contract to be procured.
- (b) Bidders are responsible for carefully examining the specifications and all provisions relating to the items to be furnished or the work to be done. Failure to respond as requested may result in rejection of a bid.
- (c) The Purchasing Agent shall issue invitations to bid or requests for proposals for materials, supplies, equipment, services, insurance and other public contracts required for the City.

(Retitled from “Issuance of Specifications” and amended 9–3–2002 by O–19095 N.S.)

§22.3009 Invitations to Bid

For *contracts* required to be bid under divisions 30 through 36 of Chapter 2, Article 2, of this Municipal Code, an invitation to bid shall be issued. The invitation to bid shall include specifications that describe the material, supplies, equipment, services or insurance with sufficient particularity to allow for competitive bidding and evaluation. The specifications shall also describe the functions and performance that are required and any applicable operational limitations or parameters.

(Amended 9–3–2002 by O–19095 N.S.)

§22.3010 Addenda to Specifications

- (a) The City may issue addenda to the specifications where necessary. All addenda shall be considered to be incorporated into the specifications.
- (b) Prior to bid submission, each bidder is responsible for determining whether addenda were issued prior to bid submission. Failure to respond to addenda may result in rejection of a bid.

(“Addenda to Specifications” added 6–29–1998 by O–18532 N.S.)

§22.3011 Request for Proposals

When a requesting department seeks a systems acquisition comprising the design and installation of state of the art technological components, the Purchasing Agent may issue a request for proposals which shall sufficiently detail the requested procurement by function, together with any applicable description, operational requirements and all structural and operating environment considerations. The Purchasing Agent may additionally reserve the right to thereafter issue an invitation to bid based on a refinement of concept from any proposal submitted.

("Request for Proposals" added 6-29-1998 by O-18532 N.S.)

§22.3016 Timely and Responsive Submission of Bids and Proposals

To be eligible for consideration, bidders are required to submit responsive bids and proposals to the City on or before the bid closing date set by the City. The City may consider a bid or proposal that was submitted before the bid closing date via a delivery medium such as the U.S. mail, even though the bid or proposal arrives after the bid closing date, provided the City finds that acceptance of the bid or proposal is in the best interests of the City and there is no possibility of collusion or fraud in the procurement process.

("Timely and Responsive Submission of Bids and Proposals" added 6-29-1998 by O-18532 N.S.)

§22.3017 Bid Opening

- (a) If advertising for submission of bids is required, the bid opening will occur at a Public Meeting.
- (b) Substantial compliance with all of the following provisions renders the bid opening valid for all purposes:
 - (1) All bids will be opened at, or immediately after, the time noticed for the bid opening.
 - (2) No bidder or interested person will be excluded from the Public Meeting.
 - (3) Where no member of the public is in attendance, at least one City officer or employee, in addition to the City employee opening the bids, will be present.
 - (4) Bids will be unsealed and opened in the presence of those attending.

- (5) The name of the Public Works, Goods, Services, or Cooperative Procurement will be audibly announced to those present followed by the name of the bidder, the name of the surety, the amount of the bond, and the total amounts or unit amounts bid.
- (c) Any person present shall have the right to ask the announcements be repeated or to ask that omitted data be supplied. Such requests will be honored to the extent they do not unreasonably delay or interfere with the bid opening procedure, as determined in the sole discretion of the City employee opening bids.

("Bid Opening" added 6-29-1998 by O-18532 N.S.)

§22.3018 Bid Opening Exceptions

- (a) Where a Public Meeting is held but no members of the public attend, the bid opening may proceed in accordance with Section 22.3017(b)(3).
- (b) In the event of public calamity or some unforeseen event (including an unusually large number of people in attendance) that renders it impossible or highly impracticable to open the bids at the time and place specified, the special procedures in Section 22.3018(b)(1)–(2) shall govern. Use of the special procedures shall not invalidate the bid opening:
 - (1) A sign will be continuously posted at the door of the originally specified room, giving notice of an alternate location of the bid opening, from the time of the public calamity or unforeseen event until completion of the alternate bid opening. An officer or employee of the City will remain by the sign to answer inquiries. Not less than one-quarter hour nor more than one hour after the originally specified time for the opening of bids, the bids may be opened in the alternate room.
 - (2) If it is impossible or impracticable to use the procedure under Section 22.3018(b)(1), the bids will either be returned to the bidders or be held unopened for a period of forty– eight hours. After forty–eight but not later than seventy–two hours after the originally specified time and place of the bid opening, bids may be opened at any hour, provided that every reasonable means has been taken to notify the respective bidders of the alternate time and place of the reset Public Meeting.

("Bid Opening Exceptions" added 6-29-1998 by O-18532 N.S.)

§22.3019 Withdrawal or Modification of Bid After Bid Opening

Any bidder who seeks or withdraw to modify a bid because of the bidder's inadvertent computational error shall notify the City Department where bids were submitted no later than three working days following the bid closing. The bidder shall provide worksheets and such other information as may be required by the City to substantiate the claim of inadvertent error. Failure to do so may bar relief and allow the City recourse from the bid surety. The burden is upon the bidder to prove the inadvertent error.

(“Withdrawal or Modification of Bid After Bid Opening” added 6-29-1998 by O-18532 N.S.)

§22.3026 Award of Contracts and Public Works Contracts

- (a) Except as provided in section 22.3026(b), for *contracts and public works contracts* that are required to be advertised, the City may make the *award* not less than ten calendar days after advertising in accordance with the following:
- (1) Except for *Sole Source Contracts* authorized under section 22.3037, *Public works contracts* under sections 22.3102 and 22.3103 shall be awarded to the lowest *responsible* and reliable *bidder* that meets the specifications.
 - (2) *Contracts*, excluding *public works contracts* and *consultant agreements*, shall be awarded on the basis of the low acceptable bid that best meets City requirements under section 22.3211.
 - (3) *Cooperative procurement contracts* under a request for proposal or bid will be awarded on the basis of the proposal best meeting City requirements.
- (b) The City is authorized to *award contracts and public works contracts* to the next *bidder* that meets all requirements when the apparent successful *bidder* under section 22.3026(a)(1) or (2) does not meet deadlines for submitting the required bond and insurance documents.

(“Award of Contracts and Public Works Contracts” added 6-29-1998 by O-18532 N.S.)

§22.3027 Waiver of Defects and Technicalities

The City may waive defects and technicalities when to do so is in the best interests of the City.

(“Waiver of Defects and Technicalities” added 6-29-1998 by O-18532 N.S.)

§22.3029 Protests of Contract Award

- (a) A non-selected *bidder* may protest *award* of a *contract*, *public works contract*, or *consultant* agreement to the selected *bidder* by submitting a written “Notice of Intent to Protest,” which shall be received by the City Department administering the contract *award*, no later than ten calendar days after the City’s *announcement* of the selected *bidder* or no later than ten calendar days from the date that the City issues notice of designation of a *bidder* as *non-responsible*. If the tenth calendar day falls on a weekend or City holiday, the protesting *bidder* may submit the Notice of Intent to Protest on the first work day following such weekend or holiday. The City shall disclose the method of *announcement* to all *bidders* in the bid documents. Failure to submit a timely Notice of Intent to Protest shall bar consideration of a protest.
- (b) The Notice of Intent to Protest shall state all grounds claimed for the protest and include supporting documentation. Failure to clearly state the grounds for the protest and provide supporting documentation shall be deemed a waiver of all protest rights.
- (c) The City Department administering the contract *award* shall review the Notice of Intent to Protest to determine whether it complies with section 22.3029(b) and whether a Protest Hearing is required under section 22.3029(d).
- (d) A protesting *bidder* may present evidence at a Protest Hearing only when the alleged grounds for the protest are as follows: (1) The City failed to follow procedures or requirements specified in the Request for Bids or Request for Proposals or equivalent, including any amendments; (2) City employees or *evaluation team* members engaged in misconduct or impropriety; (3) the City’s designation of the protesting *bidder* as *non-responsible* was incorrect. A protesting *bidder* shall not be entitled to a hearing to protest its own or another *bidder’s responsiveness*; however, the City Manager may exercise discretion and allow a *bidder* designated as *non-responsive* by the City Department to file a Formal Protest, pursuant to the Formal Procedures set forth under this section 22.3029, if the City Manager determines that a hearing is necessary to resolve a relevant factual issue that cannot be determined from the face of a bid document or proposal.
- (e) After review of a *bidder’s* Notice of Intent to File a Protest, the City Department will provide written notice to the *bidder* of its determination, detailing the factual basis for the City’s determination. Service of the City Department’s determination shall be made in accordance with one of the methods listed in Municipal Code section 11.0301.

- (f) If the *bidder* desires to continue its protest notwithstanding the City Department's determination, the *bidder* must submit a written Formal Protest, which shall be received by the City Department administering the contract *award* within ten calendar days of service of the City Department's determination. If the tenth calendar day falls on a weekend or City holiday, the protesting *bidder* may submit the Formal Protest on the first work day following such weekend or holiday. Failure to file a timely written Formal Protest shall bar consideration of the Formal Protest.
- (g) The written Formal Protest shall include a detailed factual response to the City Department's determination, including all supporting documentation. The *bidder* shall also include a bid protest bond in any of the following forms: a surety bond from a California licensed surety, an irrevocable standby letter of credit, certified check, cashier's check or money order, made payable to the City of San Diego. The bid protest bond shall be in the following amounts:

Contract Value (\$)	Bond Amount
Less than 250,000	\$5,000
250,000 – 1,000,000	\$10,000
Greater than 1,000,000	\$25,000

- (h) The City Manager shall appoint a *Protest Body* and determine whether the grounds stated in the written Formal Protest meet the requirements for a Protest Hearing, as set forth in this section 22.3029. The *Protest Body* shall conduct the Protest Hearing in accordance with the Policy approved by City Council. The *bidder's* failure to comply with Formal Protest procedures set forth in the Policy approved by City Council shall bar further consideration of the *bidder's* Formal Protest.
- (i) If the *Protest Body's* decision upholds the determination of the City Department regarding the *award*, the *Protest Body*, at its discretion, may assess the City's costs of the Protest Hearing. The *bidder* shall then pay the assessed costs within thirty calendar days of service of the decision; otherwise the City may deduct the assessed costs from the bid protest bond provided by the *bidder*.
- (j) The decision of the *Protest Body* shall be issued in accordance with the Policy approved by City Council and shall become final on the date of service of the decision, in accordance with one of the methods listed in Municipal Code section 11.0301.
- (k) The *bidder's* filing of a Notice of Intent to File a Protest or written Formal Protest shall not preclude the City Manager from rejecting all bids and rebidding a *contract*.

(Amended 9-3-2002 by O-19094 N.S.)

(Amended 1-24-2005 by O-19353 N.S.)

§22.3036 Alterations in Contracts, and Public Works Contracts

- (a) Except as provided in section 22.3036(b), whenever it becomes necessary to make alterations in *contracts*, and *public works contracts*, the City Manager shall make alterations only when authorized by the Council, unless such alterations meet all of the following criteria:
 - (1) The cost of each alteration does not increase the *contract or public works contract* amount by more than \$200,000; and
 - (2) The cost of alteration does not exceed the total amount authorized for the project by ordinance or resolution; and
 - (3) The City Manager certifies that the alterations are necessary to fulfill the purpose of the *contract*; and
 - (4) The alterations are made by agreement in writing between the contractor and the City Manager.
- (b) Notwithstanding the limitation provided by section 22.3036(a), in any *contract* for the construction of the South Bay Ocean Outfall let pursuant to cooperative agreement with Environmental Protection Agency and the International Boundary and Water Commission, the City Manager may approve alterations without authorization of the Council, provided that the cost of each alteration does not exceed five percent of the original prime *contract* value and provided that all other criteria in section 22.3036(a) are met.

(“*Alterations in Contracts, Consultant Contracts, and Public Works Contracts*”
added 6–29–1998 by O–18532 N.S.)
(Amended 1-24-20005 by o-19353 N.S.)

§22.3037 City Manager’s Certification of Sole Source Contract

- (a) The City Manager may certify that a *sole source contract* is justified because strict compliance with competitive selection or bidding requirements would be unavailing, or would not produce an advantage, or would be undesirable, impractical, or impossible.
- (b) The City Manager may delegate the *sole source* certification authority provided by section 22.3037(a) to the Assistant City Manager, Deputy City Manager, or any Department Director.

(“*City Manager’s Certification*” added 6–29–1998 by O–18532 N.S.)
(Amended 1-24-2005 by O-19353 N.S.)